

**Patent Act (R.S.C. (Revised Statutes of Canada), 1985, c. P-4)**

Act current to 2026-03-17 and on 2025-01-01.

Seal

Seal of office

13 (1) The Commissioner shall cause a seal to be made for the purposes of this Act and may cause to be sealed therewith every patent and other instrument and copy thereof issuing from the Patent Office.

Seal to be evidence

(2) Every court, judge and person shall take notice of the seal of the Patent Office, shall admit the impressions thereof in evidence in like manner as the impressions of the Great Seal are admitted in evidence and shall take notice of and admit in evidence, without further proof and without production of the originals, all copies or extracts certified under the seal of the Patent Office to be copies of or extracts from documents deposited in that Office.

R.S., c. P-4, s. 13.

Proof of Patents

Certified copies of patents as evidence

14 In any action or proceeding respecting a patent authorized to be had or taken in Canada under this Act, a copy of any patent granted in any other country, or any official document connected therewith, purporting to be certified under the hand of the proper officer of the government of the country in which the patent has been obtained,

may be produced before the court or a judge thereof, and the copy of the patent or document purporting to be so certified may be admitted in evidence without production of the original and without proof of the signature or official character of the person appearing to have signed it.

R.S., c. P-4, s. 14.

Patent Agents

15 [Repealed, 2018, c. 27, s. 251]

16 [Repealed, 2018, c. 27, s. 251]

Privileged communication

16.1 (1) A communication that meets the following conditions is privileged in the same way as a communication that is subject to solicitor-client privilege or, in civil law, to professional secrecy of advocates and notaries and no person shall be required to disclose, or give testimony on, the communication in a civil, criminal or administrative action or proceeding:

- (a)** it is between a patent agent and their client;
- (b)** it is intended to be confidential; and
- (c)** it is made for the purpose of seeking or giving advice with respect to any matter relating to the protection of an invention.

Waiver

(2) Subsection (1) does not apply if the client expressly or implicitly waives the privilege.

Exceptions

(3) Exceptions to solicitor-client privilege or, in civil law, to professional secrecy of advocates and notaries apply to a communication that meets the conditions set out in paragraphs (1)(a) to (c).

Patent agents — country other than Canada

(4) A communication between an individual who is authorized to act as the equivalent of a patent agent under the law of a country other than Canada and that individual's client that is privileged under the law of that other country and that would be privileged under subsection (1) had it been made between a patent agent and their client is deemed to be a communication that meets the conditions set out in paragraphs (1)(a) to (c).

Individual acting on behalf of patent agent or client

(5) For the purposes of this section, a patent agent or an individual who is authorized to act as the equivalent of a patent agent under the law of a country other than Canada includes an individual acting on their behalf and a client includes an individual acting on the client's behalf.

Application

(6) This section applies to communications that are made before the day on which this section comes into force if they are still confidential on that day and to communications that are made after that day. However, this section does not apply in respect of an action or proceeding commenced before that day.

2015, c. 36, s. 54; 2018, c. 27, s. 252.

Appeals

Practice on appeals

17 In all cases where an appeal is provided from the decision of the Commissioner to the Federal Court under this Act, the appeal shall be had and taken pursuant to the *Federal Courts Act* and the rules and practice of that Court.

R.S., 1985, c. P-4, s. 17; 2002, c. 8, s. 182.

Notice on appeal

18 (1) Whenever an appeal to the Federal Court from the decision of the Commissioner is permitted under this Act, notice of the decision shall be mailed by the Commissioner by registered letter addressed to the interested parties or their respective agents.

Time for taking appeal

(2) The appeal shall be taken within three months after the date of mailing of the notice, unless otherwise provided by or under this Act.

R.S., 1985, c. P-4, s. 18; 1993, c. 15, s. 30.

Use of Patents by Government

Government may apply to use patented invention

19 (1) Subject to section 19.1, the Commissioner may, on application by the Government of Canada or the government of a province, authorize the use of a patented invention by that government.

Terms of use

(2) Subject to section 19.1, the use of the patented invention may be authorized for such purpose, for such period and on such other terms as the Commissioner considers expedient but the Commissioner shall

settle those terms in accordance with the following principles:

- (a) the scope and duration of the use shall be limited to the purpose for which the use is authorized;
- (b) the use authorized shall be non-exclusive; and
- (c) any use shall be authorized predominantly to supply the domestic market.

Notice

(3) The Commissioner shall notify the patentee of any use of the patented invention that is authorized under this section.

Payment of remuneration

(4) Where the use of the patented invention is authorized, the authorized user shall pay to the patentee such amount as the Commissioner considers to be adequate remuneration in the circumstances, taking into account the economic value of the authorization.

Termination of authorization

(5) The Commissioner may, on application by the patentee and after giving all concerned parties an opportunity to be heard, terminate the authorization if the Commissioner is satisfied that the circumstances that led to the granting of the authorization have ceased to exist and are unlikely to recur, subject to such conditions as the Commissioner deems appropriate to protect the legitimate interests of the authorized user.

Authorization not transferable

(6) An authorization granted under this section is not transferable.

R.S., 1985, c. P-4, s. 19; 1993, c. 44, s. 191.

Conditions for authorizing use

19.1 (1) The Commissioner may not authorize the use of a patented invention under section 19 unless the applicant establishes that

- (a) it has made efforts to obtain from the patentee on reasonable commercial terms and conditions the authority to use the patented invention; and
- (b) its efforts have not been successful within a reasonable period.

Exception

(2) Subsection (1) does not apply in cases of national emergency or extreme urgency or where the use for which the authorization is sought is a public non-commercial use.

Prescribed uses

(3) The Commissioner may not, under section 19, authorize any use that is a prescribed use unless the proposed user complies with the prescribed conditions.

Limitation on use of semi-conductor technology

(4) The Commissioner may not, under section 19, authorize any use of semi-conductor technology other than a public non-commercial use.

1993, c. 44, s. 191; 1994, c. 47, s. 142.

Appeal

19.2 Any decision made by the Commissioner under section 19 or 19.1 is subject to appeal to the Federal Court.

1993, c. 44, s. 191.

Regulations

19.3 (1) The Governor in Council may make regulations for the purpose of implementing, in relation to patents, Article 1720 of the Agreement.

Definition of *Agreement*

(2) In subsection (1), ***Agreement*** has the same meaning as in subsection 2(1) of the *North American Free Trade Agreement Implementation Act*.

1993, c. 44, s. 191.

Application by Minister

19.4 (1) The Commissioner shall, on the application of the Minister of Health, authorize the Government of Canada and any person specified in the application to make, construct, use and sell a patented invention to the extent necessary to respond to the public health emergency described in the application.

Contents of application

(2) The application must

(a) set out the name of the patentee and the number, as recorded in the Patent Office, of the patent issued in respect of the patented invention;

(b) include a confirmation that the Chief Public Health Officer, appointed under subsection 6(1) of the *Public Health Agency of Canada Act*, believes that there is a public health emergency that is a matter of national concern;

(c) include a description of the public health emergency; and

(d) specify a person, if any, that is to be authorized to make, construct, use and sell the patented invention for the purposes of responding to the public health emergency.

Cessation of effect

(3) The authorization ceases to have effect the earlier of

(a) the day on which the Minister of Health notifies the Commissioner that the authorization is no longer necessary to respond to the public health emergency set out in the application, and

(b) one year after the day on which it is granted.

Notice

(4) The Commissioner shall notify the patentee of any authorization that is granted under this section and provide them with the information referred to in subsection (2).

Payment of remuneration

(5) The Government of Canada and any person authorized under subsection (1) shall pay the patentee any amount that the Commissioner considers to be adequate remuneration in the circumstances, taking into account the economic value of the authorization and the extent to which they make, construct, use and sell the patented invention.

Authorization not transferable

(6) An authorization granted under this section is not transferable.

For greater certainty

(7) For greater certainty, the use or sale, in relation to a public health emergency, of a patented invention that is made or constructed in accordance with an authorization granted under this section is not an infringement of the patent.

Power of Federal Court

(8) On the application of the patentee, the Federal Court may make an order requiring the Government of Canada or any person authorized under subsection (1) to cease making, constructing, using or selling the patented invention in a manner that is inconsistent with the authorization granted under this section.

Restriction

(9) The Commissioner shall not make an authorization under subsection (1) after September 30, 2020.

2020, c. 5, s. 51.

Government Owned Patents

Assignment to Minister of National Defence

20 (1) Any officer, servant or employee of the Crown or of a corporation that is an agent or servant of the Crown, who, acting within the scope of his duties and employment, invents any invention in instruments or munitions of war shall, if so required by the Minister of National Defence, assign to that Minister on behalf of Her Majesty all the benefits of the invention and of any patent obtained or to be obtained for the invention.

Idem

(2) Any person other than a person described in subsection (1) who invents an invention described in that subsection may assign to the Minister of National Defence on behalf of Her Majesty all the benefits of the invention and of any patent obtained or to be obtained for the invention.

Inventor entitled to compensation

(3) An inventor described in subsection (2) is entitled to compensation for an assignment to the Minister of National Defence under this Act and in the event that the consideration to be paid for the assignment is not agreed on, it is the duty of the Commissioner to determine the amount of the consideration, which decision is subject to appeal to the Federal Court.

Proceedings before Federal Court

(4) Proceedings before the Federal Court under subsection (3) shall be held in camera on request made to the court by any party to the proceedings.

Vesting on assignment

(5) An assignment to the Minister of National Defence under this Act effectually vests the benefits of the invention and patent in the Minister of National Defence on behalf of Her Majesty, and all covenants and agreements therein contained for keeping the invention secret and otherwise are valid and effectual, notwithstanding any want of valuable consideration, and may be enforced accordingly by the Minister of National Defence.

Person making assignment and person having knowledge thereof

(6) Any person who has made an assignment to the Minister of National Defence under this section, in respect of any covenants and agreements contained in such assignment for keeping the invention secret and otherwise in respect of all matters relating to that invention, and any other person who has knowledge of such assignment and of such covenants and agreements, shall be, for the purposes of the *Foreign Interference and Security of Information Act*, deemed to be persons having in their possession or control information respecting those matters that has been entrusted to them in confidence by any person holding office under Her Majesty, and the communication of any of that information by the first mentioned persons to any person other than one to whom they are authorized to communicate with, by or on behalf of the Minister of National Defence, is an offence under section 4 of the *Foreign Interference and Security of Information Act*.

Minister may submit application for patent

(7) Where any agreement for an assignment to the Minister of National Defence under this Act has been made, the Minister of National Defence may submit an application for patent for the invention to the Commissioner, with the request that it be examined for patentability, and if the application is found allowable may, before the grant of any patent thereon, certify to the Commissioner that, in the public interest, the particulars of the invention and of the manner in which it is to be worked are to be kept secret.

Secret application

(8) If the Minister of National Defence so certifies, the application and specification, with the drawing, if any, and any amendment of the application, and any copies of those documents and the drawing and

the patent granted thereon shall be placed in a packet sealed by the Commissioner under authority of the Minister of National Defence.

Custody of secret application

(9) The packet described in subsection (8) shall, until the expiry of the term — or, if applicable, of the additional term — during which a patent for the invention may be in force, be kept sealed by the Commissioner, and shall not be opened except under the authority of an order of the Minister of National Defence.

Delivery of secret application

(10) The packet described in subsection (8) shall be delivered at any time during the continuance of the patent to any person authorized by the Minister of National Defence to receive it, and shall, if returned to the Commissioner, be kept sealed by him.

Delivery to Minister

(11) On the expiry of the term — or, if applicable, of the additional term — of the patent, the packet described in subsection (8) shall be delivered to the Minister of National Defence.

Revocation

(12) No proceeding by petition or otherwise lies to have declared invalid or void a patent granted for an invention in relation to which a certificate has been given by the Minister of National Defence under subsection (7), except by permission of the Minister.

Prohibition of publication and inspection

(13) No copy of any specification or other document or drawing in respect of an invention and patent, by this section required to be placed in a sealed packet, shall in any manner whatever be published

or open to the inspection of the public, but, except as otherwise provided in this section, this Act shall apply in respect of the invention and patent.

Waiver by Minister

(14) The Minister of National Defence may at any time waive the benefit of this section with respect to any particular invention, and the specification, documents and drawing relating thereto shall thereafter be kept and dealt with in the regular way.

Rights protected

(15) No claim shall be allowed in respect of any infringement of a patent that occurred in good faith during the time that the patent was kept secret under this section, and any person who, before the publication of the patent, had in good faith done any act that, but for this subsection would have given rise to a claim, is entitled, after the publication, to obtain a licence to manufacture, use and sell the patented invention on such terms as may, in the absence of agreement between the parties, be settled by the Commissioner or by the Federal Court on appeal from the Commissioner.

Communication to Minister

(16) The communication of any invention for any improvement in munitions of war to the Minister of National Defence, or to any person or persons authorized by the Minister of National Defence to investigate the invention or the merits thereof, shall not, nor shall anything done for the purposes of the investigation, be deemed use or publication of the invention so as to prejudice the grant or validity of any patent for the invention.

Order to keep non-assigned application secret

(17) The Governor in Council, if satisfied that an invention relating to any instrument or munition of war, described in any specified application for patent not assigned to the Minister of National Defence, is vital to the defence of Canada and that the publication of a patent therefor should be prevented in order to preserve the safety of the State, may order that the invention and application and all the documents relating thereto shall be treated for all purposes of this section as if the invention had been assigned or agreed to be assigned to the Minister of National Defence.

Rules

(18) The Governor in Council may make rules for the purpose of ensuring secrecy with respect to applications and patents to which this section applies and generally to give effect to the purpose and intent thereof.

R.S., 1985, c. P-4, s. 20; 2001, c. 41, s. 36; 2023, c. 26, s. 488; 2024, c. 16, s. 57.

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